

Docket No.: 2336-183

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of :
HONG, Yoon Shik et al. : Confirmation No.3649
U.S. Patent Application No. 10/606,348 : Group Art Unit: 2874
Filed: June 26, 2003 : Examiner: ELLEN E. KIM
For: MICROELECTROMECHANICAL SYSTEMS (MEMS) VARIABLE OPTICAL
ATTENUATOR

RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

By Official Action mailed March 2, 2005 restriction to one of the following inventions is required under 35 USC 121:

- Species A flat panel shape (claimed in claim 4)
Species B. half wedge shape (claimed in claims 5, 6, 9 and 10)

In response, Applicants hereby elect the Species of claims 5, 6, 9, 10 (half wedge shape), upon which claims 1-3 and 5-10 are readable, for examination in the instant application. Currently, claims 1-3 and 7-8 are generic.

The election was made *with traverse* because the Examiner has failed to follow proper USPTO practice and procedure.

Every requirement to restrict has two aspects:

(A) the reasons (as distinguished from the mere statement of conclusion) why the inventions as claimed are either independent or distinct; and

(B) the reasons for insisting upon restriction therebetween. *See MPEP*, section 808 (emphasis added).

In this case, the Examiner has met none of the above requirements. The Examiner's Restriction Requirement is therefore improper and should be withdrawn or at least rephrased.

The election is further traversed because the search and examination of the entire application can be made without serious burden. The Species of claim 4 and claims 5-6, 9-10 are closely related and can apparently be covered in a single search. Accordingly, Applicants respectfully submit that the search and examination of the entire application can be made without serious burden on the Examiner, and that Restriction Requirement is not well grounded and should be withdrawn.


In view of the above, withdrawal of the Restriction Requirement and consideration of all claims pending in the instant application are believed appropriate and therefore courteously solicited.

Early examination on the merits is courteously solicited.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.

Respectfully submitted,

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Date: April 4, 2005